

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF INTEGRATED )  
RESOURCE PLANNING FOR THE PROVISION )  
OF STANDARD OFFER SUPPLY SERVICE BY )  
THE DELMARVA POWER & LIGHT )  
COMPANY UNDER 26 DEL. C. SECTION )  
1007(c) & (d): REVIEW AND APPROVAL OF ) PSC DOCKET NO. 06-241  
THE REQUEST FOR PROPOSALS FOR THE )  
CONSTRUCTION OF NEW GENERATION )  
RESOURCES UNDER 26 DEL. C. SECTION )  
1007(d) )  
(OPENED JULY 25, 2006) )

**AFFIDAVIT OF CAROLINE ANGOORLY**

STATE OF NEW JERSEY

COUNTY OF MERCER

On this 19th day of March, 2007, personally appeared before me the Subscriber (a Notary Public for the State of New Jersey), Caroline Angoorly who being first duly sworn according to law, did say and depose that:

1. I am Senior Vice President, Northeast for NRG Energy, Inc. ("NRG").
2. On December 17, 2006 NRG responded to a request for proposal issued by Delmarva Power & Light Company (hereinafter "DP&L") pursuant to 26 Del. C. §1007(d), and as part of the above-captioned docket.
3. NRG's proposed IGCC facility is an enormous capital investment, and as such NRG's proposal contains a complex and comprehensive compilation of commercial and financial information. As a result, when NRG was assembling its bid, there was an expectation

that the bids would carry a heavy presumption of confidentiality. In fact, §6.2 of DP&L's instruction to bidders in the matter specifically provided:

...[B]idders should clearly identify each page or section of information in their proposal considered by bidder to be confidential or proprietary. Delmarva reserves the right to release proposals to agents or consultants of Delmarva for purposes of proposal evaluation. Delmarva's disclosure standards and policies will contractually bind such agents or consultants. In addition, Delmarva will release proposals and related submittals to the Independent Consultant retained by the State Agencies for purposes of proposal evaluation; the Independent Consultant will make reasonable efforts to preserve bidders' confidential information. Regardless of the confidentiality, information contained in proposals may be subject to disclosure to and review by appropriate state jurisdictions, or any other governmental authority or judicial body with jurisdiction relating to these matters or agents thereof and may be subject to legal discovery. Under such regulatory and legal circumstances, Delmarva will make all reasonable efforts to preserve bidders' confidential information, including requesting that it be filed under seal.

4. Even if requests were to be made seeking access to bid information, NRG had every reasonable expectation that DP&L would seek to protect its confidential information. DP&L has not. Moreover, Commission Staff's recommendations for disclosure, discussed below, are not consistent with NRG's reasonable expectation or my past experience in similar RFP solicitations in other states.

5. In reliance on bid instructions and NRG's commercial experience, NRG compiled and submitted a thorough and detailed proposal – totaling 1,100 pages in all, in order to provide maximum comfort to the State Agencies reviewing the proposals that NRG had the spent the money, the time and has developed the know-how to offer an IGCC proposal that does not suffer from the same execution risks or issues of a less sophisticated/experienced party – in short, that in proposing a particular project, that NRG had the requisite deep financial, development, project implementation and operations wherewithal to deliver such a large and important project

to Delaware to fruition. Accordingly, the more components of NRG's overall comprehensive commercial package of data, contacts and economic information that is disclosed, ultimately the less options NRG has in completing development and implementation of its project, and in turn the harder it is to negotiate the most cost-effective, commercially robust project it can – to the detriment of NRG and in some aspects to the detriment of Delawareans in not realizing the most optimal project structure as a consequence.

6. On January 8, 2007, Delaware Public Service Commission analyst Robert Howatt sent an E-mail to the Interested Parties <sup>1</sup> in the above-captioned proceeding requesting that the bidders submit redacted public versions of their bid.

7. On January 22, 2007, NRG Energy submitted the public version of our bid redacting information which contained trade secrets and commercial or financial information of NRG and its subsidiaries that was of a privileged or confidential nature therefore exempting such information from public disclosure. Based on my nearly 20 years of experience as both an attorney representing energy companies as well as project manager, developer and senior executive with energy companies, the redactions made by NRG were both typical for the type of information accepted as confidential by administrative agencies in other states I am familiar with and is the type of information which competitors and potential counterparties of NRG would like to obtain in order to improve their competitive and negotiating positions relative to NRG. NRG has routinely and consistently maintained as confidential the type of information redacted from the public version of its bid.

8. On February 6, 2007, the Commission ruled on Professor Jeremy Firestone's Motion to Commence Proceedings to Determine Validity of Assertions of

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<sup>1</sup> "Interested Parties" refers to the E-mail service list for Docket No. 06-241, where Staff has asked all bidders to submit their filings.

Confidentiality and required the bidders to submit a second redacted version of the public bid proposal. NRG submitted a detailed letter supporting its second redacted version of its public bid proposal, which is attached hereto as Exhibit A.

9. On February 20, 2007, Commission Staff member Michael Sheehy distributed an E-mail addressed to NRG's counsel, Michael Houghton, to the Interested Parties in the above-captioned proceeding requesting that NRG submit a third redacted public bid proposal that included a detailed and itemized analysis of NRG's redactions, or else Staff was prepared to recommend to the Commission that the entire NRG bid be made public. NRG submitted a third redacted bid proposal to the Commission on February 26, 2007, which included a detailed and itemized analysis of NRG's redactions. (The covering letter to the February 26, 2007 submission is attached hereto as Exhibit B). To the extent that additional information was made public at that time, the new disclosures reflected the fact that certain circumstances had changed or evolved during February and that NRG was now able to publicly disclose certain arrangements with respect to key potential vendors and suppliers to the project.

10. At the February 27, 2007 Commission meeting, I testified on behalf of NRG regarding the third public bid proposal in general, as well as specific items referenced by Staff in memoranda circulated to the Interested Parties in the above-captioned proceeding. At that time, Staff indicated that it was conducting a "granular" review of the redactions of all three bidders, and would be making a recommendation regarding the release of any redacted information at some time in the future. At that meeting, NRG requested that Staff consult with NRG regarding specific redactions and allow NRG to further explain, if necessary, the basis for each one of NRG's confidential designations in the context of customary project development practice and the attendant commercial issues before Staff made recommendations to the

Commission. Staff never contacted NRG to discuss the redactions before Staff recommended to the Commission public disclosure of those 34 redacted items.

11. On March 13, 2007, Mr. Houghton, was notified that a staff memorandum would be released on March 14, 2007, outlining the recommendations of Staff with respect to the release or withholding from release of information contained in all the bidders' public bid proposals. At approximately 3:00 p.m. on March 14, 2007, I received Staff's memorandum dated March 13, 2007 entitled: Criteria For Determining Whether "Trade Secrets" and "Confidential Commercial and Financial Information" May Be Exempted From Required Public Disclosure (hereinafter "March 13, 2007 Memorandum"). The March 13, 2007 Memorandum was also posted on the Commission's website on March 14, 2007.

12. In an attachment to the March 13, 2007 Staff Memorandum, labeled Table A, (Exhibit C hereto) Staff recommended to the Commission that 34 separate items that were previously redacted by NRG from its 1,100 page bid as confidential trade secrets and/or proprietary information be released to the public. Table A listed NRG's documents that Staff recommended for release to the general public by reference number (DEPSC No.), a brief description of the document and a generalized reason why the document should be released. In at least seven instances from among the 34 separate items, Staff revealed the information that NRG had redacted in Staff's "description" of the document (see DEPSC Nos. [REDACTED] [REDACTED]). NRG was not afforded any opportunity to address or rebut Staff's decision to publicly disclose this confidential material prior to the Staff's public release of this information.<sup>2</sup>

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<sup>2</sup> The release of this information was the second time Staff has disclosed NRG's confidential or proprietary information without any decision by the Commission. In Staff's first memorandum discussing the bidders' redactions, which was similarly posted on the Commission's web site, Staff released a press release NRG had redacted not because of its content but because, taken in context, it identified [REDACTED] as one of NRG's potential vendors and thus its disclosure revealed information not otherwise available to NRG competitors or to other prospective vendors, disadvantaging NRG. Concerns were expressly raised at

13. In addition to the release of information from Table A without notice or an opportunity to be heard, at this time -- the day before the Commission will consider releasing the remaining items on Table A -- it is not even clear what information Staff is actually recommending that the Commission release. On March 16, 2007, I received from Staff without prior communication or notification a black binder containing documents tabbed by DEPSC No. as referenced on Table A, which purports to reflect the documents and information in those documents that Staff will recommend for release by the Commission on March 20, 2007. However, those documents - and information in them - that will be recommended for release appear to be based on *past* public bid proposal submissions by NRG and *not* based on NRG's latest public bid submission on February 26, 2007. For example, in that February 26 revised redaction of its bid proposal, the items which are DEPSC Nos. 43 and 48 from Table A of the Staff Memo posted March 14, (consisting of a Consumer Price Index or "CPI" table) were unredacted by NRG, but are now shown on Table A of the Staff Memo as still being designated by NRG as confidential information. Additionally, it is wholly unclear which portions of DEPSC No. 71, a "Presentation on Repowering," are proposed for release by Staff since the version of DEPSC No. 71 included in the black binder forwarded to me seems to be different than the version contained in NRG's February 26 revised redaction of its bid proposal. By way of final example, the identity of several of NRG's potential vendors were unredacted from the Table of Contents in NRG's February 26 bid proposal, yet in DEPSC No. 69 of Table A of the Staff Memo, posted on March 14, Staff identified these specific vendors' names as having been

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the February 27, 2007 Commission meeting by NRG regarding the way Staff released proprietary information without prior notice in its first memorandum discussing redaction issues, and yet it has happened again. In that instance, just as here, NRG was not afforded an opportunity to rebut Staff's determination prior to the Staff's public release of such information.

redacted by NRG and recommended the “release” of the potential vendors’ names from the Table of Contents.

### **Publicly Available Information**

14. As noted in ¶13 above NRG does not contest the release of certain information on Table A of the Staff Memo where it reflects an apparently erroneous determination by Staff that NRG is claiming confidentiality for the information. In addition, certain information no longer requires confidential treatment either because the confidential status of certain vendor or project information has changed as the process has evolved, or NRG has received consent from the potential vendor, counterparty or potential customer to release such information. DEPSC Nos. 50 (FEED), 52 (Waste Streams), 53 (Permits), 56 (Historical sites/landmarks), 57 (Potential Impacts), and 68 (Form L), no longer require confidential treatment and can be released. Moreover, the identity of the former NRG Delaware Project Director of Development, Morten Sissener (who is no longer employed by the Company), can now be disclosed with respect to DEPSC Nos. 39 and 45, although the remaining redacted information for those two items should not be disclosed.

15. The remaining 25 items, which Staff proposes to disclose to the public constitute, confidential trade secret or commercial or financial information and which is non-public proprietary information relating to the management and operations of NRG and which, for the various reasons set forth below, cannot be made public without providing third parties an unwarranted competitive advantage over NRG or causing serious competitive disadvantage and harm to NRG. Moreover, disclosure now will clearly interfere with the State’s ability to obtain

this kind of information from bidders considering participation in any future Delaware RFP process, particularly ones involving energy generation or purchase.

### **NRG's Proprietary Operating Information**

16. Revealing the overall and job category specific level of staffing of the proposed Indian River IGCC facility (DEPSC No. 64)<sup>3</sup> reveals NRG's operations strategy and gives insight into operating costs, providing competitors an unwarranted free look at how NRG conducts its business here and elsewhere, directly interfering with NRG's IGCC performance plans here and elsewhere. Such a "free look" at NRG's overall and specific job category specific staffing would seriously disadvantage NRG if the information were to fall into the hands of a competitor, because it would enable a competitor to benefit from how NRG proposes to operate its IGCC business in general, and its existing business in Delaware more specifically, giving that competitor an advantage when structuring its own business and when competing with NRG's bid proposal here or elsewhere.

17. Information regarding Indian River's specific accident lost work day history for multiple years (DEPSC Nos. 65, 66) gives competitors non-public, site specific operating information concerning the facility that can be used in assessing or critiquing NRG's bid and operations and also provides an advantage to competitors they would not otherwise have, creating a competitive disadvantage for NRG in Delaware and other venues. Revealing to the public the total size of NRG's [REDACTED] and detailing the group's collective experience in the energy sector (DEPSC No. 51) -- which again is not information otherwise disclosed by NRG -- provides competitors insight into the depth and breadth of a key component

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<sup>3</sup> All DEPSC Nos. discussed in ¶¶16 through 39 which NRG argues should not be disclosed are attached collectively, and in numerical order, as Exhibit D.



of NRG's [REDACTED] program and unnecessarily assists competitors in developing or responding to NRG in various competitive environments. NRG does not publicly disclose the size and expertise of NRG's [REDACTED] or of other key commercial functions, and has spent considerable money and resources acquiring the team, training them and giving them the tools to make them successful.

18. DEPSC No. 39 (A letter from NRG's Chief Executive Officer, David Crane) and DEPSC No. 64 (providing detailed information regarding the proposed staffing of the Indian River IGCC facility once constructed and operating) as well as DEPSC Nos. 65 and 66 (relating to Indian River site specific accident and lost work day information) is information not available to the general public except for its inclusion as part of NRG's response to the RFP.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **PROJECT SPECIFIC PROPRIETARY TRADE SECRET INFORMATION**

19. Staff has recommended public disclosure of information specifically related to NRG's plans for siting and operation of the IGCC facility, the technology for IGCC and carbon capture and sequestration, NRG's detailed non-public related geological studies and specific environmental information concerning fuel source emission rates.

#### **Environmental Information**

20. Staff has apparently decided to focus on Form H, Environmental Impact – Air and Omissions (“Form H”) - to inaccurately contend that NRG is attempting to prevent

disclosure of environmental and emissions data. Such a claim is unwarranted. Throughout NRG's entire approximately 1,100 page proposal substantial environmental data is made available to the public.<sup>4</sup>

21. As NRG has consistently stated throughout this process – including at the February 27, 2007 Commission meeting -- the specific and detailed information contained on Form H is not just environmental and emissions data but instead is information that factors directly into NRG's strategic construction schedules and planning, pricing, proprietary operating strategies, and unique design features of the proposed facility in the yet to be finalized construction-technology provider contract. This information is not only confidential to NRG's vendors, but also remains subject to being confirmed in NRG's negotiations with contractors. Potential vendors and technology providers, as well as competitors, could use the specific projected output and performance standards data to “reverse engineer” NRG's pricing structure. Allowing these parties to obtain an advantage over NRG in negotiating contract prices and terms or in calculating NRG's bid and pricing structure in this or future projects will seriously disadvantage NRG.

22. NRG acknowledges the need for the public to have a reasonable understanding of the environmental impact of all three bidders' proposals. In spite of the ample information on environmental and emissions relating to the proposed IGCC facility already in the public domain, after the February 27<sup>th</sup> Commission meeting, NRG provided a modified Form H that provided a good faith and reasonable indicative range of emission rates from the specific

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<sup>4</sup> See generally, Pages 62 – 96 of Volume I – Proposal of NRG's third redacted public bid proposal, which includes emission profiles of different generation technologies (p. 63); a summary of potential environmental impacts and proposed mitigation (pp. 68- 70); not to mention a lengthy narrative in pages 62-96 regarding the environmental benefits, environmental impacts and emissions of the proposed Indian River IGCC facility.

Indian River IGCC facility. Such a range allows the public to make meaningful comment on NRG's bid, without irreparably disadvantaging NRG with potential contractors, vendors and technology-providers.

23. DEPSC No. 54 (Sequestration) and DEPSC No. 71 (Presentation on Re-Powering) contain certain information that constitutes proprietary information created or obtained at great expense by NRG, the disclosure of which will create a significant competitive disadvantage for NRG in the market place.

24. For example, DEPSC No. 54 discusses the geological and site examination steps to be taken and the technical processes suggested and economic feasibility analyses in connection with NRG's proposed carbon capture sequestration, gives specifics of the science and engineering involved in this project at the site for the CO<sub>2</sub> injection, addresses geophysical testing, geological analysis and hydrological review as well as the test drilling and underground well infrastructure assessment and testing for the project. This information comes directly from NRG's contract with El Paso – a leading North American gas handling and transport company with whom NRG has entered into a sequestration alliance, to work with NRG in the performance of significant work as part of the carbon capture sequestration plan that NRG will implement -- and is subject to a confidentiality agreement in place between NRG and El Paso. Disclosure places NRG at risk with El Paso and also gives competitors use of information NRG has sought to protect, created at great effort and expense by El Paso and NRG, to those who will use it to construct their own business plans and bids – and to analyze NRG's future bids – in the IGCC/carbon capture and sequestration arena, all potentially undercutting NRG's competitive position in this area, in which it has invested material monetary and human resources over a considerable period.

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25. Releasing the particulars of DEPSC No. 54 through public disclosure will allow competitors to access strategic information about how NRG operates its facilities and develops and plans its projects. Release would also allow vendors to determine that NRG is choosing certain equipment or products before negotiations have begun, with the result being the release of proprietary information, seriously injuring NRG's ability to negotiate the best and lowest possible price with potential vendors. This result is inconsistent with the current RFP process designed, in part, to help stabilize the cost power in Delaware.

26. Allowing competitors and/or potential vendors to know anticipated timelines puts the Company at a competitive disadvantage, particularly with respect to other projects including, among others, the planned IGCC facility at NRG's existing power plant in Tonawanda, New York for which the Company received an award from the New York Power Authority via a competitive bid process, as well as NRG's planned IGCC projects in Connecticut and Texas. NRG would also be placed at a serious competitive disadvantage in negotiating with vendors and other key counterparties.

27. Finally, DEPSC No. 71, a presentation made by an NRG employee and outside consultant titled "Re-Powering Existing PC Plants With IGCC", constitutes proprietary work product developed by NRG and addresses not only the proposed Indian River IGCC facility, but also facilities in Montville, Connecticut and in Tonawanda, New York.

28. This presentation was presented at a 2006 Gasification Technology Conference but – in NRG's view – includes highly sensitive proprietary information regarding the operations of those facilities, the IGCC technology considered for those facilities, screening study results for those and other facilities and specific information on project schedules, the disclosure of which to the public is seriously damaging to NRG's competitive position in the

power generation market place. NRG never expected that the inclusion of this detailed, project specific information in response to the Delaware RFP could ever result in it being publicly released.

29. That being stated, NRG will agree to disclosure of the presentation except the following slides and/or information from the following slides:

- a. The slides relating to the proposed Montville and Huntley IGCC's project if:
  - i. as to Montville the lines captioned "Retirement", "Net" and "Cost" are redacted, and
  - ii. as to Huntley the line captioned "Cost" is redacted.
- b. The entire slide entitled "Phase I – Screening Study Results"
- c. The entire slide entitled "Project Schedules"

**Proprietary Vendor Contacts and Vendor Information**

30. The March 13, 2007 Staff Memorandum recommends the release of information that NRG has compiled regarding specific contacts within prospective vendors. Specific contact information for those vendors is not widely known throughout the industry and is information that NRG has culled through years of hard work and experience. And in at least one instance, this is information which NRG is bound to maintain in confidence pursuant to a confidential disclosure agreement with Shell Oil Company.

31. DEPSC Nos. 41, 42, 44, 45, 59, 60, 61, 62 and 63 contain information regarding potential vendors, partners and customers with whom NRG would in some fashion partner on the Indian River IGCC facility with, and names of which NRG has maintained in

confidence. These include: [REDACTED]

[REDACTED]

Whether these vendors are selected as part of the IGCC development process going forward is subject to continuing and ongoing commercial assessment and negotiations, and release now of this information will greatly harm NRG's ability to negotiate contracts with these potential partners, vendors and customers.

32. DEPSC Nos. 60, 61, 62 ad 63 also contain information regarding specific business contacts at potential vendors with whom NRG might have worked on the Indian River IGCC project, the names of which NRG maintains in confidence. These specific contacts have been developed through the investment of significant time and effort and their disclosure would hand over to IGCC competitors ready sources of potential interest and technology that NRG has cultivated at significant expense. (See DEPSC Nos. 60, 61, 62 and 63). For example, to the extent NRG has discussed with these individuals possible use of their Company's products or technology, facilitating these contacts through disclosure puts NRG's IGCC plans and project timing at risk and provides our competitors opportunities and advantages they would not have otherwise. This information is directly relevant to NRG's competitive advantage in its business, and not just in the context of this RFP. If this information were disclosed to the public, NRG's competitors would be able to capitalize on NRG's confidential work product.

33. Finally, DEPSC No. 72, the Shell presentation on its Coal/Gasification process is proprietary trade secret information of Shell which discusses in great detail the operating conditions, performance and processes employed by their proprietary IGCC technology. NRG is bound by the terms of a June 13, 2006 Confidential Disclosure Agreement with Shell Oil Company which prohibits NRG from disclosing information of a technical nature

relating to the Shell process. NRG has communicated with Shell about Staff's recommendation for the release of this information and Shell has informed NRG that it objects to the disclosure of this information. Disclosure, therefore, not only puts NRG at risk with Shell but gives our competition insight into certain IGCC technology and IGCC planning materials that advance their market position at NRG's expense.

**Information relating to Pricing, Financing and Substantive  
Commercial Terms of the NRG Proposal**

34. DEPSC No. 40 (Financing Entities), 46 (Financing and Ownership), 47 (Potential Off Takers), 49 (Variable Interest Entity Consolidation Financing, Dispatch, Carbon, Lien Control), 58 (Ownership Structure/Financing), and 70 (The Power Purchase Agreement) constitute confidential commercial or financial information disclosure of which would seriously injure NRG.

35. The name of potential financing partners [REDACTED] and their respective letters of interest, including some terms upon which that interest may be pursued, are highly confidential. Release of this information would injure NRG's relationships with these institutions and others used by NRG [REDACTED]), revealing possible ownership structure, interest rates assumption, loan terms and the details of the letters of interest provided by institutions (DEPSC No. 58) and provides to our competition NRG's financing strategies and concerns which we have addressed with these banks. In that same regard, particular references to timing (DEPSC No. 46 at page 32) reduces NRG's commercial leverage in ongoing discussions and negotiations with potential financing partners. Actual financing terms and selection of key lending institutions have not been

finalized, and the financing projections are still subject to considerable adjustment. If NRG's bid is selected, NRG expects to enter the marketplace to negotiate the most commercially reasonable financing terms with lending institutions. Disclosure of such information will competitively disadvantage NRG's ability to negotiate agreements with key lending institutions. NRG has determined that references in DEPSC Nos. 46 (paragraph 1 of page 31) and 58 (paragraph 1 of page 145 and the last paragraph on page 151) to NRG's liquidity, total market capitalization and/or projected additional free cash flow may be disclosed.

36. Both the summary comments of NRG on particular aspects of the draft Power Purchase Agreement ("PPA") provided by Delmarva in this RFP (DEPSC No. 49) as well as the disclosure of the edited and proposed alternative terms contained in the PPA which NRG attached to its bid (DEPSC No. 70) will reveal to competitors financial and economic negotiating concerns and strategies which will seriously disadvantage NRG, if such information falls into competitors' hands.

37. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] all give third parties – including competitors – free detailed business and legal work product and strategic insights of NRG that can only educate and advantage them in the energy market place - and cost NRG the time, money and effort of negotiating these terms, only to be disadvantaged with competitors and with those with whom we attempt to negotiate PPAs.

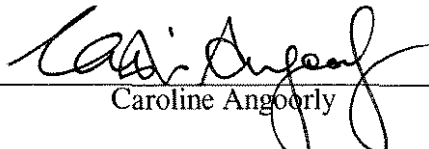
38. Further, this information goes directly to what type of deal NRG has proposed and more importantly what type of deal NRG would accept, which could cause serious competitive disadvantage to NRG in both this competitive solicitation process (which remains



ongoing), but will also competitively disadvantage NRG in bid processes in other states – currently and in the future.

39. Finally, identifying (DEPSC No. 47) [REDACTED] [REDACTED]

[REDACTED] reveals to NRG's competition the companies with whom NRG may partner to make the Indian River IGCC successful. Again, NRG has spent considerable time and money developing commercial relationships with these parties and allowing disclosure of this information can only harm NRG's relationships with these entities and thereby advantages our competitors.

  
Caroline Angoorly

SWORN TO AND SUBSCRIBED before me

this 19 day of March, 2007.

  
Notary Public

KAREN TILLEY  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JANUARY 19, 2011

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